IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Bail Appl..No. 6889 of 2007()

CRIME NO. 758/2007 OF KAYAMKULAM POLICE STATION

PETITIONER/ACCUSED

SUNIL KUMAR, AGED 35 YEARS,
S/O. CHANDRAN, PEEDIKATHURUYIL, PERINGALA,
P.O.KAYAMKULAM.

BY ADV. SRI.N.SURESH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, KAYAMKULAM POLICE
STATION, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6889 of 2007

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Dated this the 16th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 384 I.P.C. Petitioner is the drawing teacher in a school, where the daughter of the defacto complainant, a girl aged 13 years, is studying.

2. Cash and gold ornaments kept in the house of the defacto complainant went on disappearing. The defacto complainant made enquiries. She could not get any clue. She found that some one was contacting her daughter frequently on telephone. She wanted to ascertain the details. It was the petitioner, who was calling the daughter of the defacto complainant. He disconnected the phone when he found that the defacto complainant had taken the phone. The defacto complainant contacted her brother. He came and interrogated the child. The child then gave startling information. The girl narrated that she had taken away gold ornaments as well as cash

for handing over to the petitioner. The petitioner threatened the child that he will ensure that she will be sent out of the school on the allegation that another boy of the school was in love with her and he had purchased some gold ornaments for her. Employing such threat he was using the child to take away the articles from the house. The mother went to the school and complained to the authorities. The petitioner, thereafter, is making himself scarce. He was not available for arrest and interrogation. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False allegations are being raised against the petitioner. In these circumstances he, a teacher, may now be granted anticipatory bail, submits the counsel.

4. The learned Prosecutor opposes the application. He submits that the materials collected so far clearly indicate the complicity of the petitioner. There is no worthwhile allegation of malafides also. There is no reason now to suspect the version of the defacto complainant and her daughter. At any rate, the petitioner does not deserve to be armed

with an order of anticipatory bail, before he is interrogated by the police. Attempt must be made to trace the stolen articles. In any view of the matter, the petitioner is not entitled for anticipatory bail at this stage, submits the Prosecutor.

5. The learned counsel, in reply, submits that the status of the petitioner as a teacher may not be lost sight of. He shall lose his employment. The status and prestige of the petitioner is likely to be brought down in the assessment of students. In these circumstances the petitioner may not be subjected to the trauma of arrest and detention, submits the counsel.

6. The case diary has been perused. I have gone through the statements of the defacto complainant and her daughter. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that, I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The status of the petitioner as a teacher, which he is alleged to have abused, cannot certainly entitle

him to grant of anticipatory bail. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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